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MAILED
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OFFICE OF PETITIONS

In re Patent No. 5,420,107 :
Issue Date: May 30, 1995 :
Application No. 08/279,829 : REQUEST FOR INFORMATION
Filed: July 25, 1994 :
Attorney Docket No. 01098-32767 :
:

This is a request for information in response to the letter filed April 1, 2011.

Procedural History:

- The above-identified patent issued on May 30, 1995.
- The third maintenance fee could have been timely paid during the period from May 30, 2006 through November 30, 2006, or with a late payment surcharge during the period from December 1, 2006 through May 30, 2007.
- No maintenance fee having been received, the patent expired on May 31, 2007.
- The 2 year time period for filing a petition under 37 C.F.R. § 1.378(c) expired on May 30, 2009.
- Patentee filed a petition to accept the unavoidably delayed payment of the maintenance fee pursuant to 37 C.F.R. 1.378(b) on July 26, 2010.
- The petition was dismissed in a decision mailed on February 4, 2011.

Upon further review of your letter dated July 26, 2010 and February 4, 2011, it is unclear what party was responsible for tracking and paying the maintenance fee in this patent. In accordance with the law, a patent will expire if the maintenance fee is not paid on time and thus no action is required on the part of the USPTO since it is patentee's burden to keep the patent in force. The maintenance fee may be accepted by the Director of the USPTO if it is shown that the delay in submission of the maintenance fee was unavoidable. In this regard, it is unclear from the record whether patentee or patentee's attorney was responsible for tracking and paying the maintenance fee. Included with the July 26, 2010 letter was an e-mail from patentee's then counsel, Karyn F. Massic, "confirming your instructions that you do not want us to continue prosecuting the 'Glycerol-lactate estero for use as an energy supplement during exercise and recovery' patent application". The e-mail is not specific as to any other matters that may be pending with the attorney. It is required that petitioner state the name of the party responsible for tracking and paying the maintenance fee for this patent.

Either petitioner or another must be engaged in tracking and paying the maintenance fee. While petitioner may employ another to track and pay the maintenance fee, this does not end the inquiry. It is required that petitioner provide evidence on the record that the party responsible for tracking and paying the maintenance fee had a system in place for this purpose and this patent was entered into that system. Further, it is required that petitioner show that despite having this system in place, petitioner was unavoidably delayed in making the maintenance fee payment.

In summary, petitioner is required to answer the following questions:

- 1). What was the name of the party responsible for tracking and paying the maintenance fee?
- 2). What evidence does petitioner have to show that the present patent was entered into a system for tracking and paying the maintenance fee?

Petitioner is given TWO (2) MONTHS from the date of this letter in which to file a response. Petitioner is cautioned to be as complete and thorough as possible, since no further reconsideration or review of this matter will be undertaken by the Director of the USPTO. Accordingly, it is extremely important that petitioner supply any and all relevant information

and documentation in order to meet the burden of showing unavoidable delay. This includes statements by all persons with direct knowledge of the cause of the delay, setting forth the facts as they know them.

Telephone inquiries concerning this communication should be directed to Petitions Attorney Cliff Congo at (571)272-3207.



Anthony Knight
Director
Office of Petitions